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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,431	08/17/2001	Gary Stephen Shuster	409475-40	3441

7590 06/03/2005

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EXAMINER

BILGRAMI, ASGHAR H

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/932,431

Applicant(s)

SHUSTER, GARY STEPHEN

Examiner

Asghar Bilgrami

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: 03/26/02
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 21-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Rakoshitz et al (U.S. 6,578,077 B1).

3. A per claims 21 & 29 Rakoshitz disclosed a method for operating a server group to improve bandwidth efficiency in a computer network, wherein the server group is operable to transmit files between the server group and destinations on the computer network through a communication link having a finite bandwidth (col.6, lines 3-13, the method comprising: monitoring bandwidth usage of a communication link for connecting a server group to a wide area network, using software operably associated with the communication link; distributing a rule set to individual servers of the server farm, wherein the rule set defines rules for limiting serving of data from the individual servers depending on file type and a current state of the bandwidth usage (col.9, lines 24-62); characterizing files stored in operable association with the individual servers according to type, using software operating on the individual servers (col.15, lines 42-56) ; informing the individual servers of the current state of the bandwidth usage as

monitored by the software operably associated with the communication link; and serving the files from the individual servers to the wide area network via the communication link in compliance with the rule set, so as to limit serving of specified file types from the servers during periods when the bandwidth usage exceeds a threshold amount relative to a finite bandwidth of the communication link (col.14, lines 57-62).

4. A per claims 22, 23 & 24 Rakoshitz disclosed the method of Claim 22, wherein the characterizing step further comprises characterizing a type of each of the files based on a corresponding file name extension for each file (col.14, lines 41-44 & col.15, lines 42-56).

5. A per claims 24 & 32 Rakoshitz disclosed the method of Claim 21, wherein the characterizing step further comprises crawling through a memory operably associated with the server to identify associated groups of files, wherein each of the groups of files is configured to be aggregated into a larger file (col.9, lines 24-62 & col.15, lines 42-67).

6. As per claims 25 & 33 Rakoshitz disclosed the method of Claim 21, wherein the characterizing step further comprises crawling through files stored in a storage device operably associated with the server to identify files that do not contain hyperlinks and are not identified by hyperlinks in other files stored by the storage device(col.9, lines 24-30 & col.15, lines 42-67).

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7. A per claims 26 & 34 Rakoshitz disclosed the method of Claim 21, wherein the serving step further comprises selecting a rule from the rule set according to the current state of the bandwidth usage (col.9, lines 49-62)

8. A per claims 27 & 35 Rakoshitz disclosed the method of Claim 21, further comprising distributing a replacement rule set to individual servers of the server group when the current state of the bandwidth usage changes by more than a specified amount, wherein the replacement rule set replaces the rule set and defines rules for limiting serving of data from the individual servers depending on file type and a current state of the bandwidth usage (col.9, lines 24-62).

9. A per claims 28 & 36 Rakoshitz disclosed the method of Claim 21, further comprising repeating the informing step at periodic intervals (col.20, lines 42-65).

Response to Arguments

10. Applicant's arguments filed 15 February 2005 have been fully considered but they are not persuasive. When prior art is presented to the applicant, it is the responsibility of the applicants to not simply read portions of the prior art but to also gain an understanding of the spirit of the design.

11. Applicant argued that "In response to the Examiner's argument in paragraph 11 of the Office Action, Applicant submits that the statement by Rakoshitz that "the bandwidth

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management) tool can be deployed an any appropriate point in the network data path" (col. 9:33-34) does not amount to a disclosure of the distributed architecture of the present invention".

As to applicants arguments Rakoshitz clearly describes on col.9, lines 24-30 that bandwidth management tool (software based) is loaded onto the server.

12. The applicant argued that "Rakoshitz fails to disclose or suggest, and teaches away from, operating a server group to limit serving of specified file types during periods of high bandwidth, and informing the individual servers of the group of a current bandwidth usage state using a monitoring software, as defined by Claim 21".

As to applicant's argument Rakoshitz along with disclosing the monitoring of the bandwidth (col.9, lines 40-62) and also disclosed a software that is monitoring and controlling traffic on the basis of file types on (col.2, lines 39-45, col.7, lines 61-67, col.8, lines 1-2, col.13, lines 35-54 & col.14, lines 41-44).

13. The applicant argued that "Rakoshitz fails to disclose or suggest separate software distributed as defined by Claim 29, with monitoring and communicating functions performed in association with a communication link, and characterizing and serving functions, including implementation of bandwidth management rules, at the server level".

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As to applicants arguments Rakoshitz clearly states on col.9, lines 24-29, that the bandwidth management tool (software) is loaded onto the “server” from where it performs the management and monitoring functions (col.9, lines 40-62).

14. The applicant argued that “Rakoshitz fails to disclose or suggest crawling through stored server files to characterize certain file types, as defined by Claims 24-25 and 32-33”.

As to applicants arguments it is obvious from the art disclosed by Rakoshitz that the management software is loaded on the server is basically analyzing the server by the virtue of crawling through the server for various file types and other variation associated with the server. (col.9, lines 24-62 & col.15, lines 42-56).

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asghar Bilgrami whose telephone number is 571-272-3907. The examiner can normally be reached on M-F, 8:00-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Asghar Bilgrami
Examiner
Art Unit 2143

AB

A handwritten signature in black ink, appearing to read "William C. Vaughn, Jr.", with a large, stylized circular flourish at the end.

**WILLIAM C. VAUGHN, JR.
PRIMARY EXAMINER**